



N A R U C
National Association of Regulatory Utility Commissioners

April 8, 2003

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

RE: Comments of the National Association of Regulatory Utility Commissioners filed in the proceedings captioned: *In the Matter of Telephone Number Portability*, CC Docket 95-116; *In the Matter of Numbering Resource Optimization, Notice of Proposed Rulemaking*, CC Docket No. 99-200; CC Docket 96-98; CC Docket 96-116; FCC 02-73 (Rel. March 14, 2002).

Dear Secretary Dortch,

The National Association of Regulatory Utility Commissioners (NARUC) respectfully submits these Reply Comments in response to the January 23, 2003 *Petition for Declaratory Ruling* (Petition) filed by the Cellular Telecommunications & Internet Association (CTIA) and various comments filed supporting that petition. NARUC respectfully requests any waivers needed to make this filing out-of-time. Alternatively, NARUC requests that the FCC treat the comments as a written *ex parte* filing.

The FCC has established a November 24, 2003 deadline for wireless carriers to provide local number portability (LNP). The CTIA Petition seeks a declaratory ruling to resolve a long-standing inter-modal porting implementation "policy" issue (that disadvantages wireline carriers) which forwarded to the FCC by the North American Numbering Council through several Wireless Wireline Integration Task Force (WWITF) reports. *The wireless carriers represented in the WWITF previously stated that wireless local number portability (LNP) should move forward without resolution of the rate center disparity issue and that this issue does not present a technical impediment to wireline-to-wireless porting.* In contrast, CTIA asks the FCC to resolve its petition before the November LNP deadline. Failing that, CTIA wants the FCC to yet again delay the implementation date for LNP. As discussed below, while the CTIA petition raises issues that should be addressed, *nothing raised in the petition or the record of this proceeding can justify another delay of the wireless LNP deadline.* Moreover, the FCC is still considering action on a March 2002 rulemaking proposing to lift, as an LNP pre-requisite, the requirement for carriers to receive a bona fide request (BFR) from another carrier.

In response to the issues raised by the January CTIA Petition, and the related outstanding March 2002 FCC rulemaking, NARUC recently passed a resolution respectfully suggesting the following:

- *The FCC should require that wireless-to-wireless and inter-modal number portability be implemented for wireless carriers by the November 2003 deadline;*
- *No issue raised in the CTIA petition necessitates (or can justify) a further delay of wireless LNP and the benefits it will bring to consumers;*
- *Wireless carriers should be allowed to recapture LNP implementation costs through any lawful means; and*
- *The FCC should either to eliminate the BFR requirement in the top 100 MSAs, or provide a mechanism whereby State regulatory agencies can issue BFRs to implement LNP by the November 24, 2003 deadline.*

In support of these positions, NARUC states as follows:

I. THE FCC SHOULD ELIMINATE THE BFR REQUIREMENT IN THE TOP 100 MSAS OR PROVIDE A MECHANISM TO ALLOW STATES TO ISSUE BFRS.

The FCC has set a deadline for wireless carriers to implement number portability by November 24, 2003. Notwithstanding this deadline, the FCC has left in place the requirement for bona fide requests (BFRs) in the top 100 MSAs. This requirement means no wireless carrier must implement LNP in a given Metropolitan Statistical Area (MSA) unless requested to do so by another carrier. This current BFR requirement allows wireless carriers to decide in which MSAs Wireless LNP is implemented making the FCC's mandate of November 24, 2003 dependent on wireless industry choice. Although some wireless carriers have submitted BFRs to other companies in their service areas, it is unclear to what extent BFRs have been issued and, therefore, unclear in which MSAs customers will be able to benefit from LNP come November 24, 2003.

NARUC anticipated, based on, *inter alia*, the text of the FCC's March 2002 *Further Notice of Proposed Rulemaking* ("FNPRM"),¹ that the FCC would create a record and vote quickly on the BFR issue presented. Action on that FNPRM is still pending. The FNPRM reiterated the FCC's findings (and NARUC's arguments supporting the original FCC findings) that "number portability contributes to the development of competition among alternative providers by . . . {1} allowing customers to respond to price and service changes without changing their telephone numbers, {2} enabl(ing) carriers to alleviate number shortages by implementing code sharing and other mechanisms to transfer unused numbers among carriers that need numbering resources." The FNPRM also said: "These benefits weigh in favor of a requirement that all local exchange carriers and covered CMRS carriers in the top 100 MSAs be LNP-capable, regardless of whether they receive a request from a competing carrier. Similarly, these benefits indicate that carriers entering markets in the largest 100 MSAs should be required to be LNP-capable upon entry." We agree and urge the FCC to act quickly to confirm its December 2001 findings.

NARUC's most recent resolution revised slightly our long held position on the impact on the public interest of a BFR requirement in the top 100 MSAs. We continue to believe the FCC should lift the BFR requirement in the top 100 MSAs. However, the February 26, 2003 resolution suggests as an alternative, if the FCC determines to leave the BFR requirement in place, it should also simultaneously authorize State commissions to issue BFRs in a manner that does not further extend the November 24, 2003 deadline for carriers that receiving the State PUC's BFR.

¹ See, 67 FR 16332 (Apr. 5, 2002). Commendably, the FCC's earlier December 28, 2001 *Third NRO Report and Order* {67 FR 6431 (Feb. 12, 2002)}, eliminated the BFR requirement to respond to state comments that, because some wireline carriers had not implemented LNP in certain exchanges, those States could not implement pooling throughout an entire MSA. The FCC said: "Some states have advised that not all wireline carriers in the top 100 MSAs are LNP capable. Apparently, some carriers have interpreted our rules to require LNP capability only when a request is received from a competing carrier, even in the top 100 MSAs. . . . We therefore clarify . . . that the LNP and pooling requirements extend to all carriers in the largest 100 MSAs, regardless of whether they have received a specific request to provide LNP from another carrier." The FCC also clarified that the BFR requirement now only applied outside the top 100 MSAs. However, in March 2002, the FCC responded to industry allegations that it had failed to provide procedural due process before issuing the December order, by reversing that order and issuing a further NPRM to determine if it should confirm its December findings: "[W]e seek comment . . . on whether we should again extend the LNP requirements to all carriers in the largest 100 MSAs, regardless of whether they receive a request to provide LNP." As noted, *supra*, the further NPRM cites with approval, NARUC's basic arguments for extending the BFR exemption to wireless carriers, says those benefits: "*weigh in favor of a requirement that all . . . covered CMRS carriers in the top 100 MSAs be LNP-capable, regardless of whether they receive a request from a competing carrier. [and seeks] comment on whether these benefits to competition. . . warrant a reinstatement of the [December order's findings and requirements]* {Emphasis Added}."

II. THE COMPLIANCE DEADLINE FOR WIRELESS LOCAL NUMBER PORTABILITY NEED NOT AND SHOULD NOT BE DELAYED.

Delays in the implementation of wireless local number portability continue to pose an obstacle to competition and consumer choice. The FCC's previous on-the-record findings referenced earlier, the comments filed by several other parties to this proceeding,² and even recent Wall Street analysis indicates that the imposition of wireless LNP will significantly lower barriers to competition and provide benefits to consumers.³

² See, generally, the March 13, 2003 reply comments filed by the *California Public Utilities Commission and People of the State of California* (CPUC) and the February 26, 2003 Initial Comments filed by the CPUC, *WorldCom, Inc.*, the *Public Utilities Commission of Ohio*, and the *Illinois Citizens Utility Board*. See also *Nextel's comments* urging the FCC to resolve the rate center issue in advance of [wireless LNP] deployment, but not advocating the deadline be deferred if the issue is not resolved. *Nextel Initial Comments*, p. 5.

³ See, *Chicago-Based Group Opposes Delay For Wireless Customers' Number Portability* Chicago Tribune 2003-03-04 Mar. 4—CUB, the Chicago-based consumer advocacy group, opposed a move by [CTIA] to once again postpone a deadline for giving customers so-called number portability . . . last week . . . MERRILL LYNCH SAID IT IS LIKELY THAT WIRELESS [LNP] WILL BE IMPLEMENTED [THIS] YEAR . . . IF THAT HAPPENS, THE REPORT SAID, IT WILL ALMOST CERTAINLY INCREASE THE NUMBER OF CUSTOMERS WHO SWITCH WIRELESS PROVIDERS EACH YEAR. Full Story: <http://www.chicago.tribune.com/> See also - *FCC Expected To Enforce Number Portability Deadline*: Yukari Iwatani (Reuters) [M]obile phone users . . . may soon avoid the hassle of changing phone numbers when switching wireless service providers, MAKING IT EASIER TO TAKE ADVANTAGE OF DISCOUNT CALLING PLANS... THAT MEANS CONSUMERS WILL FACE LESS OF AN OBSTACLE WHEN MOVING TO CHEAPER SERVICE PLANS OR SWITCHING SERVICES IF THEY'RE NOT HAPPY WITH THEIR CURRENT PROVIDER, SAID . . . CONSUMER REPORTS MAGAZINE. "The cell phone companies use the phone number like crazy glue," said Heim "If you want to change to a different company -- too bad." IN A RECENT SURVEY . . . BY CONSUMER REPORTS, ABOUT ONE-THIRD OF RESPONDENTS SAID THEY WANTED TO SWITCH WIRELESS SERVICES. BUT A SIGNIFICANT NUMBER OF THEM DIDN'T BECAUSE THEY WERE UNABLE TO TAKE THEIR PHONE NUMBER . . . That is precisely the reason why wireless operators are fiercely objecting to this rule . . . IN ADDITION TO BEING ABLE TO TAKE THEIR PHONE NUMBER, ANALYSTS SAID CONSUMERS WILL ALSO LIKELY BENEFIT FROM EVEN MORE ATTRACTIVE PRICE PLANS AND NEW FEATURES AS WIRELESS OPERATORS WORK HARDER TO KEEP CUSTOMERS AND ATTRACT NEW ONES. . . Verizon Wireless and Cingular . . . which have ties to traditional telephone companies, may even try to bundle their services to keep customers, analysts said. "Consumers are the big winners on this issue," said Rudy Baca, a wireless analyst with Precursor Group. . . . However, . . . [LNP] may ultimately help the wireless industry in their competition with traditional telephone service because customers will be more likely to make their cell phone their main phone if they know the number will stay the same. http://www.atso.com/Network_Billing_Update/Apr_2003/wlnp.htm See also - *Virgin Backs LNP* By Sue Marek March 18, 2003 (Wireless Week)—The major U.S. carriers have been very vocal in their opposition to wireless [LNP], but not all operators think LNP is a bad idea. . . . Virgin Mobile USA is not only in favor of the service but has urged the FCC to make U.S. carriers meet the upcoming Nov. 24 LNP deadline. . . . company believes LNP is essential to making the wireless industry competitive. . . In January, CTIA asked the FCC to make wireline carriers allow their customers to keep their telephone numbers when they transfer service to a wireless carrier . . . Further, some carriers have asked that the FCC delay wireless-to-wireless LNP until wireline-to-wireless LNP is available. But Virgin . . . is opposed to any LNP deadline delays . . . LEAP COMMUNICATIONS ALSO IS IN FAVOR THE SERVICE BECAUSE IT BELIEVES IT WILL GET MORE CUSTOMERS IF WIRELINE SUBSCRIBERS CAN SWITCH TO WIRELESS AND KEEP THEIR EXISTING NUMBERS. . . . THERE ARE SOME CARRIERS THAT ANALYSTS BELIEVE WILL BENEFIT . . . ANALYSTS AT THOMAS WEISEL PARTNERS . . . VERIZON WIRELESS AND NEXTEL . . . WILL MOST LIKELY BENEFIT FROM LNP, WHILE CINGULAR WIRELESS . . . IS EXPECTED TO LOSE SUBSCRIBERS. See: <http://www.wirelessweek.com/index.asp?layout=newsat2direct&starting=3&pubdate=03/18/03> *Report: Numbers Rule Hurts AT&T* By Elisa Batista Mar. 04, 2003 PT A plan to let cell-phone customers switch service providers without giving up their phone numbers would likely hurt . . . AT&T Wireless and Cingular . . . according to a recent report from brokerage firm Merrill Lynch. Meanwhile, such a move could prove advantageous for Verizon Wireless . . . as well as newcomer T-Mobile, the report said.

Several parties to this proceeding, explain at length why, regardless of how or when the FCC resolves the issue CTIA has identified, the deadline for wireless local number portability (LNP) need not and should not be further delayed. See footnote 2, *supra*. As those comments note, the issues identified in the CTIA petition do not affect wireless-to-wireless portability or even preclude all wireline-to-wireless number portability.⁴ There simply is no question that implementation of wireless LNP will significantly enhance competitive pressures in the wireless industry and should proceed as scheduled. NARUC has been on record for literally years opposing further extensions to this deadline. Most recently, at our Winter 2003 meetings in Washington, the association passed yet another resolution urging the FCC to brook no further delay. The resolution is attached as Appendix A.

It is significant that to date all of the wireless industry's requests for extensions of the LNP deployment deadline purported to be based on cost concerns and technical difficulties in implementing LNP within the requisite time frames. This most recent CTIA petition, filed less than 11 months before the LNP deadline, for the first time in the years since the FCC originally imposed a wireless LNP mandate, raises as an issue that purportedly could justify further delay of the LNP deadline - the somewhat familiar policy issue of whether and how wireline carriers are obligated to provide portability of their customers' telephone numbers to wireless providers whose service area overlaps the wireline carriers' rate centers.

This sudden interest and focus on an issue pertaining only to wireline-to-wireless LNP is disingenuous.⁵ The wireless industry is well aware that the most immediate competitive threat to CTIA's members is competition *among* wireless carriers. While NARUC has consistently raised the prospect of intermodel portability as one key consideration for getting wireless LNP systems in place, all of the pre-2003 arguments presented by industry focus expressly and almost exclusively on wireless-to-wireless competition. Recall the previous wireless industry "forbearance" petition's heavy reliance on allegations that there is "enough competition" in the wireless industry - with exclusive citations to the wireless-to-wireless churn rate. The technical problem elucidated in CTIA's current petition would affect few customers, but wireless portability -- the ability for consumers to freely choose their wireless providers --

⁴ It is correct that a wireless customer seeking to port to a wireline carrier faces circumstances the wireline customer seeking to port to a wireless carrier does not. The wireless customer trying to port to a wireline carrier may have to take a full seven-digit number change, while the converse would not be true. Given these facts, which are incontrovertible, CTIA's complaining about wireline-to-wireless porting is ironic indeed. See, e.g., BellSouth's February 26, 2003 comments at p. 3 which, citing a May 1998 NANC Report on Wireless/Wireline LNP Integration, state that the difference in porting capabilities between wireless and wireline service providers "... creates a significant competitive disadvantage to wireline service providers." Because wireless carriers service territories are not tied to rate centers "... porting from a wireline to wireless provider is virtually unlimited." The customer's physical location is irrelevant when porting to or among wireless carriers. "By contrast, porting from a wireless to a wireline provider is subject to limitations. Specifically, the end user must be physically located within the rate center associated with the NPA-NXX of the telephone number in order to effectuate a port to a wireline carrier. Clearly, this situation disadvantages wireline carriers - a fact that CTIA conveniently ignores." Despite perceiving this problem, BellSouth concludes that "number portability from wireline carriers to wireless carriers can still occur despite the rate center disparity issue." Indeed, BellSouth says it has "...no intentions of preventing a customer from porting his/her telephone number to a wireless carrier upon that customer's request, regardless of whether the carriers' service areas overlap." *Id.* at 2-3

⁵ The problem identified by CTIA is one that the FCC, along with both the wireline and wireless industries, has known about since at least 1997. CTIA Petition at 1. In fact, most customers realize, on the wireline side, that when they move locations within a community, portability allows them to take their wireline phone number with them to the new location in some situations. Portability is not possible, however, when the customer's new location is outside of the original rate center. The customer must then be assigned a new telephone number in the new rate center. The rate center problem affects wireline carriers, because they are not able to port an existing number from one rate center to another. The rate center problem does not, however, significantly affect service provider portability within the wireless industry (the ability to port a wireless number from one wireless provider to another), as most wireless carriers are located in the same rate centers.

guarantees that the public interest will be served. As the analyst cited in note 3, *supra*, observe, such wireless-to-wireless LNP will drop one more barrier to competition and force wireless carriers to provide quality service. Such competition can only evolve when customers are free to take telephone numbers from one wireless carrier to another.

Further, as California noted in its February comments, the rate center disparity issue is not a technical issue that prevents the porting of wireline numbers to wireless carriers. Indeed, the CTIA petition does not identify any *technical* issue requiring FCC resolution prior to the November 24, 2002 wireless LNP compliance deadline. The issue CTIA raises is not a problem of inconsistent rate centers as its petition suggests, but rather a problem of asymmetric billing systems. Wireline carrier rating and routing, being distance sensitive, is tied to the traditional rate center structure. In contrast, wireless carrier billing is based on minutes of use, and not on distance sensitivity. There is no basis in the record provide for the FCC to deprive wireless customers of the opportunity to port their service to competing wireless carriers on the theory that some wireline customers might be inconvenienced by a wireline carrier's refusal to port the customer's number to a different rate center. In any event, as the CPUC noted in its February 25th comments, the industry has developed a conflict resolution process for addressing carrier conflicts pertaining to carrier requests to port numbers.

Finally, given the FCC's reclassification of wireless providers from access customer to local competitors, as a matter of regulatory parity,⁶ the FCC should also require wireless local service providers to implement LNP by the November 24, 2003 date. If CMRS providers desire to maintain their status as local carriers for purposes of reciprocal compensation and other benefits, they must also assume the LNP obligation.

CONCLUSION

For the forgoing reasons, NARUC respectfully requests that the FCC continue to work to address the rate center disparity issue identified in CTIA's petition, but under no circumstances, use continued work on that issue to further delay the current November 24, 2003 deadline for wireless LNP, (2) expeditiously address the outstanding BFR issues as outlined, *supra*.

Respectfully submitted,

//signature

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⁶ In its August 1996 decision in CC Docket 96-98 and 95-185 (*In the Matter of Implementation of Local Competition Provisions of the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*), the FCC determined that wireless providers met the 1996 Act's definition of telephone exchange service provider. Consequently, the FCC determined that wireless carriers should no longer be classified as access customers of the wireline local exchange carriers (LECs), but instead should be subject to the FCC's local carrier reciprocal compensation and interconnection rules. The overall effect of this reclassification was to reduce significantly wireless providers' interconnection expense. First, under the reciprocal compensation regime, wireless providers are compensated by competing LECs for calls terminating on wireless networks. Second, reciprocal compensation reduces overall wireless interconnection expense by setting such charges at total element long run incremental cost. Under the FCC's rules, wireless carriers are not required to provide their potential local competitors unbundled network elements as are their LEC counterparts. It is also beyond dispute that the LECs already have LNP obligations with fewer regulatory exceptions for deployment than their wireline carrier companions.

Resolution Concerning Number Portability For Wireless Carriers

WHEREAS, The FCC has set a deadline for wireless carriers to implement number portability by November 24, 2003; and

WHEREAS, Notwithstanding this deadline, the FCC has left in place the requirement for bona fide requests (BFRs) in the top 100 MSAs, wherein no wireless carrier must implement LNP in a given Metropolitan Statistical Area (MSA) unless requested to do so by another carrier; and

WHEREAS, The current BFR requirement allows wireless carriers to decide in which MSAs Wireless LNP is implemented making the FCC's mandate of November 24, 2003 dependent on wireless industry choice; and

WHEREAS, Although some wireless carriers have submitted BFRs to other companies in their service areas, it is unclear to what extent BFRs have been issued and, therefore, unclear in which MSAs customers will be able to benefit from LNP come November 24, 2003; and

WHEREAS, The Cellular Telecommunications & Internet Association (CTIA) filed a petition in CC Docket No. 95-116, on January 23, 2003, seeking a declaratory ruling to resolve inter-modal porting implementation issues forwarded to the FCC by the North American Numbering Council (NANC) via the Wireless Wireline Integration Task Force (WWITF) First, Second, and Third Reports; and

WHEREAS, The wireless carriers represented in the WWITF previously stated that LNP should move forward without resolution of the rate center disparity issue and that this issue does not present a technical impediment to wire line to wireless porting; and

WHEREAS, Public comments on the January 23, 2003 CTIA petition for declaratory ruling are due February 26, 2003, and reply comments are due by March 13, 2003; and

WHEREAS, The CTIA states in its petition that the "FCC should promptly clarify that wireline firms must port throughout the wireless carrier's service area;" and

WHEREAS, A primary goal of the petition filed by the CTIA is to have the FCC resolve various issues or delay, again, the implementation date for LNP; and there are no technical issues presented by the CTIA that will prevent customers in the top 100 Metropolitan Statistical Areas from porting their numbers to wireless carriers, and

WHEREAS, Wireless carriers have argued in other FCC proceedings for "technology neutral" regulation and lack of LNP remains a significant disparity between the wire line and wireless industries; and

WHEREAS, Delays in the implementation of wireless number portability continue to pose an obstacle to consumer choice; now therefore be it

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened in its February 2003 Winter Meetings in Washington, D.C. encourages the FCC to require that wireless to wireless and inter-modal number portability be implemented for wireless carriers by the November 2003 deadline; and be it further

RESOLVED, That wireless carriers should be allowed to recapture implementation costs through any lawful means; and be it further

RESOLVED, That NARUC encourages the FCC either to eliminate the BFR requirement in the top 100 MSAs, or provide a mechanism whereby State regulatory agencies can issue BFRs to implement LNP by the November 24, 2003 deadline; and be it further

RESOLVED, That NARUC commends those wireless carriers that have filed BFRs for their pro-competitive actions and encourages them to report to the FCC and relevant State regulatory agencies in which MSAs BFRs have been filed; and be it further

RESOLVED, That NARUC file comments with the FCC in CC Docket No. 95-116, encouraging the FCC to resolve the CTIA petition and finding that issues raised in the CTIA petition do not necessitate a further delay for wireless LNP and the benefits it will bring to consumers.

Sponsored by the Consumer Affairs Committee

Adopted by the NARUC Board of Directors February 26, 2003

CERTIFICATE OF SERVICE

I, Monica Sharma, certify that on this 8th Day of April, I sent a copy of the foregoing to the persons listed below by 1st class mail postage prepaid.

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